

Remarks

The present paper is submitted in response to the Office Action dated November 10, 2004. In the Office Action, the Examiner rejected claims 1, 3-5, 7-21 and 24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 10, 16, 17 and 18 of U.S. Patent No. 6,443,166 in view of Brown (U.S. Patent No. 5,017,240).

With respect to the rejection of claims 1, 3-5, 7-21 and 24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 10, 16, 17 and 18 of U.S. Patent No. 6,443,166 in view of Brown, Applicants submit herewith a Terminal Disclaimer to overcome this rejection. Accordingly, submission of the Terminal Disclaimer renders the obviousness-type double patenting rejection moot.

Applicants respectfully submit that the filing of the terminal disclaimer is to obviate the rejection based on the judicially created doctrine obviousness-type double patenting and is not an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicants further respectfully submit that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Id.* at 874, 1394-95.

Applicants respectfully submit herewith an additional information disclosure statement and Form PTO-1449 for review by the Examiner.

CONCLUSION

In view of the foregoing remarks and amendments, Applicants respectfully submit that all of the claims in the application are in allowable form and that the

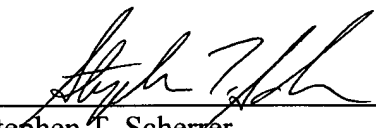
In re Tunney, et al.
U.S. Patent Application No. 09/901,250

application is now in condition for allowance. If, however, any outstanding issues remain, Applicants urge the Examiner to telephone the Applicants' attorney so that the same may be resolved and the application expedited to issue. Applicants respectfully request the Examiner to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,

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By: _____


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